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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOCKET #

U.S. DISTRICT COURT
WEST. DIST. OF WISCONSIN

MAR 12 2002

FILED
JOSEPH W. SKUPNIEWITZ CLERK
CASE #

NEIL GAIMAN, a resident of
Wisconsin, and MARVELS AND
MIRACLES, LLC, a Wisconsin
Limited Liability Company,

Plaintiffs,

v.

TODD MCFARLANE, a resident of
Arizona, and TODD MCFARLANE
PRODUCTIONS, INC., and Arizona
corporation, TMP INTERNATIONAL,
INC., a Michigan corporation,
MCFARLANE WORLDWIDE, INC.,
a Michigan corporation, and IMAGE
COMICS, INC., a California
corporation,

Defendants.

Case No. 0200048 S

**DECLARATION OF TODD McFARLANE IN SUPPORT
OF IMAGE COMICS, INC.'S MOTION TO DISMISS**

DECLARATION OF TODD McFARLANE

I, TODD MCFARLANE, declare as follows:

1. I am the President of Image Comics, Inc. ("Image"), a position that I have held since Image was founded in 1993. I have personal knowledge of the matters stated herein and if called as a witness, could and would testify competently thereto under oath.

2. I am also President of Todd McFarlane Productions, Inc. ("TMP"). From time to time, TMP contracts with Image to publish comic books that TMP or I have created or that I have the intellectual property rights to publish. Image does not have any intellectual property rights to the characters that TMP or I create, and is only a licensee of mine. This is the case with other artists for whom Image publishes as well. Image never owns the intellectual property of the characters that it publishes, and only owns its own name and logo.

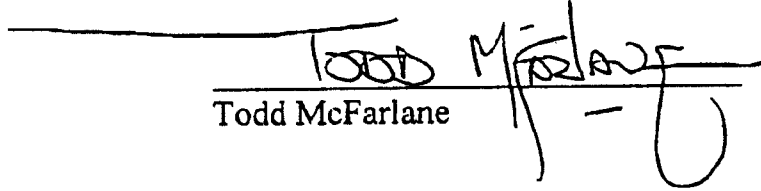
3. I am a defendant in this case. Paragraph 29 of the Complaint falsely alleges that during 1992, on behalf of all the other defendants (including Image), I came to an oral agreement with Gaiman as to Gaiman's contribution to the Spawn series.

4. Similarly, paragraph 44 of the Complaint falsely alleges that "McFarlane, acting on behalf of all Defendants, met with Gaiman in Oakland, California in or around April 1997, and had a discussion regarding Gaiman's entitlements..." I never had any discussions with Gaiman where I was representing Image's interests regarding rights to the Spawn properties. Image has never owned any rights whatsoever to the Spawn properties.

5. Regarding rights to either the Spawn or Miracleman properties, I have never told Mr. Gaiman that I was representing Image or negotiating on

Image's behalf. Whatever dispute exists between Mr. Gaiman and myself, does not include my licensee Image.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11 day of March, 2002 at Tempe, Arizona.


Todd McFarlane

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Irvine, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 38 Technology Drive, Irvine, California 92618-2301. On March 12, 2002, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: **DECLARATION OF TODD McFARLANE IN SUPPORT OF IMAGE COMICS, INC.'S MOTION TO DISMISS**

SERVED UPON: **SEE ATTACHED SERVICE LIST**



(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Irvine, California. I am readily familiar with the practice of Brobeck, Phleger & Harrison LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.



(BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by Sherman, Alexander & Associates LLC to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed with the court upon request.



(BY FEDERAL EXPRESS) I am readily familiar with the practice of Brobeck, Phleger & Harrison for collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.



(BY FACSIMILE) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error. Pursuant to C.R.C. 2009(i), I caused the transmitting facsimile machine to issue properly a transmission report, a copy of which is attached to this Declaration.



(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



(FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on March 12, 2002, at Irvine, California.


Patti L. Gruwell

PROOF OF SERVICE LIST

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